

REMARKS

After entry of this Amendment, the pending claims are: claims 39, 41, 42, 58-60 and 63. The Office Action dated February 4, 2008 has been carefully considered. Claims 40, 44-51, 61 and 62 have been canceled. Claims 1-38, 43, 52-57 were previously canceled. Claims 39, 41 and 58-60 have been amended. New claim 63 has been added. Support for the amendments to claims 39, 41 and 58-60 and for newly added claim 63 can be found throughout the Specification and Drawings and specifically in paragraph No. 83 and drawing Nos. 12A-12C. Accordingly, no new matter has been added. Reconsideration and allowance of the pending claims in view of the above Amendments and the following Remarks is respectfully requested.

Applicant has deleted the limitation previously added in the Response to Final Office Action dated May 30, 2007 and in the Supplemental Amendment dated November 16, 2007. In particular, Applicant has deleted the limitation, and the accompanying Remarks distinguishing the prior art based on, *inter alia*, the longitudinal flexible member being substantially axially inelastic. As such, this limitation no longer exists and should not be relied upon, as creating an estoppel or otherwise limiting the scope of the above-listed pending claims.

In the Office Action dated February 4, 2008, the Examiner:

- rejected claims 39-42, 44-51 and 58-62 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement;
- rejected claims 39-42, 44-51 and 58-62 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; and
- rejected claims 39, 41, 42, 44-51 and 58-62 under 35 U.S.C. 103(a) as being unpatentable over U.S. Published Patent Application No. 2003/0195514 to Trieu *et*

al. (“Trieu”) either alone or in combination with U.S. Published Patent Application No. 2005/0288672 to Ferree (“Ferree”).

35 U.S.C. 112 REJECTIONS

The Examiner rejected claims 39-42, 44-51 and 58-62 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In addition, the Examiner rejected claims 39-42, 44-51 and 58-62 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Both rejections are based on the language “substantially axially inelastic,” as recited in independent claim 39 and “substantially axially inelastic,” as recited in independent claim 46.

Without addressing the merits of the Examiner’s rejections, in an effort to expedite prosecution of the present application, it is respectfully submitted that this language have been deleted from all pending claims. As such, it is believed that these rejections are now moot. Withdrawal of these rejections is respectfully requested.

INDEPENDENT CLAIM 39

As an initial matter, Applicant notes that the Examiner’s rejection did not reject dependent claim 40 as being unpatentable in view of Trieu, either alone or in combination with Ferree. Therefore, it is believed, but for the Examiner’s rejection of dependent claim 40 under 35 U.S.C. 112, first paragraph and 35 U.S.C. 112, second paragraph, dependent claim 40 would have been deemed allowable. As such,

dependent claim 40 is assumed to include allowable subject matter. It is respectfully submitted that the limitations of dependent claim 40 have been substantially incorporated into independent claim 39.

Thus, it is respectfully submitted that, as amended, independent claim 39 is allowable. Allowance of independent claim 39 is therefore respectfully requested.

Moreover, claims 39, 41, 42, 44-51 and 58-62 were rejected as being unpatentable over Trieu either alone or in combination with Ferree. Specifically, the Examiner indicates Trieu discloses each and every limitation of independent claim 39 but for a rigid spacer located between the first and second end portions and circumferentially disposed about the longitudinal flexible member; wherein the first and second end portions directly limit motion of the rigid spacer along the longitudinal member and the rigid spacer limits the minimum distance between the first vertebrae and the second vertebrae. That is, as admitted by the Examiner, Trieu does not disclose a rigid spacer located between first and second end portions and circumferentially disposed about a longitudinal flexible member. Rather, the Examiner states that it would be obvious to one of ordinary skill in the art to construct the device of Trieu with a rigid spacer located between the first and second ends and circumferentially disposed about the longitudinal member as taught by Ferree. Applicant respectfully traverses this rejection with respect to the above-listed claims, as amended.

Referring to Figs. 19(a)-19(c), Trieu discloses a blocking member 502 having a body formed of a suture, braid, cord, rope, or strand like material, a first end 504a and a second end 504b. The first and second ends 504a, 504b each including an attachment portion with an eyelet for receiving an anchor 510 in the form of a pin fastener.

Referring to Fig. 10, Ferree discloses an elastic cord 1004 extending between and coupled to pedicle screws 1006, 1008 and an extension blocking sleeve 1002 placed over the elastic cord 1004 after the elastic cord 1004 is positioned in the pedicle screws 1006, 1008.

Applicant respectfully submits that Trieu, either alone or in combination with Ferree, does not disclose each and every limitation of independent claim 39. Amended claim 39 is directed to a connection system for use in a bone fixation device, and recites, *inter alia*, as follows:

a rod comprising ... a rigid first end portion ...; a rigid second end portion; a longitudinal flexible member located between the first end portion and the second end portion ...; and a plurality of rigid spacers located between the first and second end portions and circumferentially disposed about the longitudinal flexible member ... **wherein each of the plurality of rigid spacers include a male interlocking member and a female interlocking cavity configured to structurally interlock with a corresponding female interlocking cavity and male interlocking member of one of the plurality of rigid spacers, the first end portion and the second end portion, respectively.** (Emphasis added).

Applicant respectfully submits that there is absolutely no disclosure, teaching, or suggestion in Trieu, either alone or in combination with Ferree, of a rod comprising a plurality of rigid spacers located between the first and second end portions and circumferentially disposed about the longitudinal flexible member wherein each of the plurality of rigid spacers include a male interlocking member and a female interlocking cavity configured to structurally interlock with a corresponding female interlocking cavity and male interlocking member of one of the plurality of rigid spacers, the first end portion and the second end portion, respectively.

Therefore, it is respectfully submitted that Trieu, either alone or in combination with Ferree, does not disclose, teach, or suggest all of the limitations of independent claim 39. Thus, it is respectfully

submitted that independent claim 39 is allowable over Trieu, either alone or in combination with Ferree. Withdrawal of this rejection and allowance of independent claim 39 is respectfully requested.

Furthermore, as claims 41, 42 and 58-60 all depend from independent claim 39, it is submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 41, 42 and 58-60 is also respectfully requested.

NEWLY ADDED INDEPENDENT CLAIM 63

Newly added independent claim 63 is directed to a connection system for use in a bone fixation device, and recites, *inter alia*, as follows:

... a rod comprising: a rigid first end portion ...; a rigid second end portion; a longitudinal flexible member located between the first end portion and the second end portion ... and a plurality of rigid spacers located between the first and second end portions and circumferentially disposed about the longitudinal flexible member ... **wherein each rigid spacer includes a male interlocking member and a female interlocking cavity, the male interlocking member being configured to engage a corresponding female interlocking cavity formed in one of an adjacent rigid spacer, the first rigid portion and the second rigid portion, the female interlocking cavity being configured to engage a corresponding male interlocking member formed on one of an adjacent rigid spacer, the first rigid portion and the second rigid portion.** (Emphasis added).

Trieu discloses a blocking member 502 having a body formed of a suture, braid, cord, rope, or strand like material, a first end 504a and a second end 504b. The first and second ends 504a, 504b each including an attachment portion with an eyelet for receiving an anchor 510 in the form of a pin fastener.

Ferree discloses an elastic cord 1004 extending between and coupled to pedicle screws 1006, 1008 and an extension blocking sleeve 1002 placed over the elastic cord 1004 after the elastic cord 1004 is positioned in the pedicle screws 1006, 1008.

Applicant respectfully submits that there is absolutely no disclosure, teaching, or suggestion in either Trieu or Ferree of a plurality of rigid spacers located between the first and second end portions and circumferentially disposed about the longitudinal flexible member; wherein each rigid spacer includes a male interlocking member and a female interlocking cavity, the male interlocking member being configured to engage a corresponding female interlocking cavity formed in one of an adjacent rigid spacer, the first rigid portion and the second rigid portion, the female interlocking cavity being configured to engage a corresponding male interlocking member formed on one of an adjacent rigid spacer, the first rigid portion and the second rigid portion.

Therefore, it is respectfully submitted that neither Trieu or Ferree, either alone or in combination, discloses, teaches, or suggests all of the limitations of independent claim 63. Thus, it is respectfully submitted that independent claim 63 is allowable over Trieu and Ferree, either alone or in combination. Allowance of independent claim 63 is respectfully requested.

CONCLUSION

No fee is believed due for this submission. If, however, the Commissioner determines otherwise, the Commissioner is authorized to charge any fees which may now or hereafter be due in this application to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicants' attorney at the number listed below.

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Respectfully submitted,

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